



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC 135-60
Regulation title	Real Estate Board Common Interest Community Management Information Fund Regulations
Action title	Restructure registration fees proportional to the size of the community
Date this document prepared	March 27, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

House Joint Resolution 686 (2005 Session) requested the Virginia Real Estate Board to conduct a study to review the adequacy of, training of, and disclosure of financial information to consumers by financially compensated professional managers of condominium associations, property owners' associations and other similar common interest communities. As a result of this study, the Board concluded that further education was needed to make associations and those who are directing them better aware of their duties and responsibilities to their communities and would help to alleviate potential problems and misunderstandings with financially compensated professional association managers. The Board acknowledged that because of high volume of turnover in associations and board membership, training should be an ongoing process.

The Board further concluded that the Common Interest Community Management Information Fund Regulations should be revised to create an annual filing fee schedule structured proportional to the size of the association. An association of 5 lots/units should not be paying the same fee as an association containing 5,000 lots/units. Currently, the annual filing fee for all associations is \$25 regardless of size. This increase in funding would be used to either hire additional staff to assist the Community Association Liaison or to engage a third-party firm to provide the much needed training/education for associations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Common Interest Community Management Information Fund is created in § 55-529 of the Code of Virginia “to be used in the discretion of the Real Estate Board to promote the improvement and more efficient operation of common interest communities through research and education.” The Board’s authority to promulgate regulations is established in § 55-530 which states that “the Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act to accomplish the purpose of this chapter” (Chapter 29 of Title 55 of the Code of Virginia - Common Interest Community Management Information Fund).

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Real Estate Board concluded as a result of the study conducted for House Joint Resolution 686 (2005 Session) that further education was needed to make associations and those who are directing them better aware of their duties and responsibilities to their communities and would help to alleviate potential problems and misunderstandings with financially compensated professional association managers. Accompanied by the ever increasing number of communities that are controlled by Property Owners’ Associations and Condominium Unit Owners’ Associations, and the high volume of turnover in association and board membership, additional funds would be needed to fund any additional training and education. A restructuring of fees proportional to the size of the communities would provide the additional funding needed since this program is self-funding and receives no monies from the Commonwealth’s General Fund.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The current annual filing fee for an association is \$25. The Board proposes amending 18 VAC 135-60-60 to provide an initial fee and a renewal fee.

Proposed fees would be divided into 4-7 categories to reflect the number of unit/lots in the community. The Board felt that a community containing 5,000 units/lots, 500 units/lots or only 25 units/lots should pay different fees to be more equitable.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Failure to revise fees to increase funding would result in a decline in the effectiveness of the Community Association Liaison's position as well as an increase in problems and misunderstandings with those who are directing the associations. No viable alternatives could be determined.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Thomas K. Perry, DPOR, Real Estate Board, Property Registration, 3600 West Broad Street, Richmond, VA 23230; 804-367-8510; Fax 804-367-6946; propreg@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.}

A public hearing will be held after publication of the proposed regulation and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory

approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Real Estate Board will be using the participatory approach in the development of the proposed regulations.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes are not expected to have an impact on families.